

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Connect America Fund)	WC Docket No. 10-90
)	
A National Broadband Plan for Our Future)	GN Docket No. 09-51
)	
Establishing Just and Reasonable Rates for Local Exchange Carriers)	WC Docket No. 07-135
)	
High-Cost Universal Service Support)	WC Docket No. 05-337
)	
Developing a Unified Intercarrier Compensation Regime)	CC Docket No. 01-92
)	
Federal-State Joint Board on Universal Service)	CC Docket No. 96-45
)	
Lifeline and Link-Up)	WC Docket No. 03-109
)	
Universal Service Reform – Mobility Fund)	WT Docket No. 10-208

COMMENTS OF COMCAST CORPORATION

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COMMENTS OF COMCAST CORPORATION

Pursuant to section 1.429(f) of the Federal Communications Commission’s (“Commission’s” or “FCC’s”) rules,¹ Comcast Corporation (“Comcast”) and its affiliates hereby submit these comments in response to the petitions filed in the above-captioned proceeding² seeking reconsideration or clarification of the Commission’s Report and Order and Further Notice of Proposed Rulemaking.³

¹ 47 C.F.R. § 1.429(f).

² FCC Public Notice, *Petitions for Reconsideration of Action in Rulemaking Proceeding*, Report No. 2945 (rel. Jan. 12, 2012), 77 Fed. Reg. 3635 (Jan. 25, 2012).

³ *Connect America Fund; A National Broadband Plan for Our Future; Establishing Just and Reasonable Rates for Local Exchange Carriers; High-Cost Universal Service Support; Developing a Unified Intercarrier Compensation Regime; Federal-State Joint Board on Universal Service; Lifeline and Link-Up; Universal Service Reform – Mobility Fund*, WC

I. INTRODUCTION AND SUMMARY

The Commission's far-reaching Order reforming universal service and intercarrier compensation ("ICC") is intended to be consistent with its fundamental goals of modernizing the universal service fund ("USF" or "Fund") and ICC regimes for a broadband world, ensuring fiscal responsibility, requiring accountability from companies receiving support, and transitioning to market-driven and incentive-based policies.⁴ Many parties seeking reconsideration of the Commission's Order, however, advocate modifications that squarely conflict with these objectives and, in some cases, seek to reverse basic elements of the Commission's plan. If implemented, the changes sought by these parties would both undercut advances achieved by the Commission's reforms and tilt the balance the Commission attempted to achieve among competing concerns and interests.

As discussed more fully below, Comcast urges the Commission to reject self-serving proposals that would result in unnecessary increases in the subsidies and other revenues paid to certain segments of the telecommunications industry. The Commission similarly should deny proposals that seek to repeal reforms mandated by the Order without offering any new evidence that would justify the changes they seek, including, for example, requests that the Commission expand the call signaling requirements and impose an asymmetrical compensation regime for VoIP-PSTN ICC traffic. The Commission should modify its original decision only in the limited circumstances where the proposed modification would further, not reverse or frustrate, the

Docket Nos. 03-109, 05-337, 07-135, and 10-90; GN Docket No. 09-51; CC Docket Nos. 96-45 and 01-92; and WT Docket No. 10-208, Report and Order and Further Notice of Proposed Rulemaking, FCC 11-161 (rel. Nov. 18, 2011) ("Order" or "Further Notice" or Order and FNPRM").

⁴ *Id.* ¶ 11.

underlying goals of the Order. For example, Comcast supports Sprint's and USTA's recommendation that the Commission require local exchange carriers ("LECs") that engage in access stimulation to reduce their terminating access charges to a rate no higher than \$0.0007 per minute during the ICC transition. Comcast also supports the Rural Associations' request for clarification that state-defined local calling areas must be used to distinguish toll and non-toll VoIP-PSTN traffic during the transition.

II. THE COMMISSION SHOULD REJECT SELF-SERVING REQUESTS FOR RECONSIDERATION THAT WOULD UNDERMINE THE COMMISSION'S COMPREHENSIVE UNIVERSAL SERVICE AND INTERCARRIER COMPENSATION REFORMS

The Commission's comprehensive plan for reforming intercarrier compensation and universal service was based on an enormous record, consisting of thousands of pages of formal comments, expert testimony, *ex parte* submissions, and other evidence.⁵ The Commission's efforts produced a thorough, detailed order that attempted to balance a wide variety of, and in some cases competing, policy concerns and objectives. Overall, the Commission's plan is designed to eliminate the "byzantine" policies and procedures and "competitive distortions" that have plagued the current universal service and intercarrier compensation regimes.⁶ Although these fundamental reforms were necessary to facilitate the availability of affordable voice and broadband service for all Americans, achieving that goal required the Commission to overhaul,

⁵ *Id.* ¶ 12 ("We have received over 2,700 comments, reply comments, and *ex parte* filings totalling over 26,000 pages, including hundreds of financial filings from telephone companies of all sizes, including numerous small carriers that operate in the most rural parts of the nation. We have held over 400 meetings with a broad cross-section of industry and consumer advocates. We held three open, public workshops, and engaged with other federal, state, Tribal, and local officials throughout the process.").

⁶ *Id.* ¶¶ 9, 34.

and in some instances eliminate, well-established programs and policies that served the interests of particular segments of the industry but no longer served the public interest.

Several parties filing petitions for reconsideration of the Order seek changes to the Commission's plan that appear designed to reinstate much of the *status quo ante* that the plan would eliminate. For example, the Rural Associations ask the Commission to "reconsider its budgeting approach" and adopt the bloated "budget" proposed by the rural LECs, which calls for growth – not caps or reductions – in the amount of support that would flow to rural carriers.⁷ In a similar vein, numerous parties seek changes to the plan that would result in unwarranted increases in the subsidies they receive from the Commission's support mechanisms. For example, Frontier and Windstream request that the Commission raise the limit imposed on one-time support payments above \$775 per unserved location,⁸ while USTA and the Rural Associations ask the Commission to revise the baseline revenue calculation for determining Eligible Recovery in a manner that would increase their support payments.⁹ Similarly, the Rural Associations urge the Commission to weaken the standards for obtaining a waiver of the USF and ICC support reduction rules so that it will be easier for incumbent LECs to obtain more support from the high cost fund, notwithstanding the fact that these carriers have the ability

⁷ Petition for Reconsideration and Clarification of the National Exchange Carrier Association, Inc.; Organization for the Promotion and Advancement of Small Telecommunications Companies; and Western Telecommunications Alliance, WC Docket No. 10-90, at 7-8 (Dec. 29, 2011) ("Rural Associations Petition").

⁸ Petition for Reconsideration and/or Clarification of Frontier Communications Corp. and Windstream Communications, Inc., WC Docket No. 10-90, at 12-20 (Dec. 29, 2011) ("Frontier/Windstream Petition").

⁹ Petition for Reconsideration of the United States Telecom Association, WC Docket No. 10-90, at 30-31 (Dec. 29, 2011) ("USTA Petition"); Rural Associations Petition at 31-33.

under the Commission’s plan to offset reductions in support payments through end user charges and payments from the CAF.¹⁰

Other petitions seeking changes to the Commission’s Order are styled as requests for “clarification,” but actually seek to reverse decisions that the Commission reached clearly and unambiguously in the Order. For example, the Rural Associations ask the Commission to confirm that VoIP traffic exchanged prior to the effective date of the Order is and always has been subject to the same ICC obligations as any other switched voice traffic.¹¹ This “clarification” simply ignores the fact that the Commission repeatedly made it clear in the Order that its VoIP-PSTN ICC framework applies prospectively and “does not address intercarrier compensation payment obligations for VoIP-PSTN traffic for any prior periods.”¹²

The common denominator of the foregoing requests is that, if granted, they would exert upward pressure on the size of the Fund or increase revenue flows to the petitioners during the industry’s transition to a bill-and-keep system for traffic exchanged between carriers. As such, the proposals are flatly inconsistent with two fundamental elements of the Commission’s

¹⁰ Rural Associations Petition at 19-22.

¹¹ *Id.* at 35 n.89.

¹² See Order and FNPRM ¶ 935 n.1874; see also *id.* ¶ 935 (“Although our action clarifying the prospective intercarrier compensation treatment of VoIP-PSTN traffic does not resolve the numerous existing industry disputes, it should minimize future uncertainty and disputes regarding VoIP compensation”); *id.* ¶ 943 (“We adopt a *prospective* intercarrier compensation framework that brings all VoIP-PSTN traffic within the section 251(b)(5) framework.”) (emphasis supplied); *id.* ¶ 945 (“Our intercarrier compensation framework for VoIP-PSTN traffic will apply prospectively”); *id.* ¶ 946 (“We believe that our *prospective* intercarrier compensation regime for VoIP-PSTN traffic best balances the relevant policy considerations”) (emphasis supplied); *id.* ¶ 940 (“The *prospective* intercarrier compensation regime we adopt for a LEC’s exchange of VoIP traffic with another carrier focuses on what we refer to as ‘VoIP-PSTN’ traffic.”) (emphasis supplied); *id.* ¶¶ 939 (“we find it appropriate to address the *prospective* intercarrier compensation obligations associated with VoIP-PSTN traffic”) (emphasis supplied).

comprehensive USF/ICC reform plan: (1) the establishment of a “firm and comprehensive budget” for USF support;¹³ and (2) the adoption of an overall framework that strikes a “careful balance of the interests of all stakeholders”¹⁴ based on “a holistic view of the entire record.”¹⁵ Moreover, upsetting the balance the Commission has achieved may prompt other parties, who suffered revenue reductions and/or cost increases due to the Order, to seek redress. The Commission, consequently, should reject such self-serving requests for reconsideration and affirm its commitment to the cornerstone principles underlying the Order.

III. THE COMMISSION SHOULD REJECT PROPOSALS FOR ADDITIONAL CALL SIGNALING ENFORCEMENT MECHANISMS OR REQUIREMENTS

The Rural Associations urge the Commission to “allow terminating carriers to bill the carrier or provider sending the calls to them at their highest effective rate when those calls fail to carry sufficient call signaling information to allow for proper billing.”¹⁶ The Commission appropriately considered and rejected the merits of this enforcement mechanism in the Order, and the Rural Associations provide no basis for reconsidering this determination.

The Associations contend that their proposal to assess the highest termination charges on non-compliant traffic is reasonable because intermediate providers would simply “be able to charge [the higher] rate to the service provider that preceded it in the call path.”¹⁷ This argument ignores the fact that the Commission concluded in the Order that “[p]roposals to impose upstream liability or financial responsibility on carriers threaten to unfairly burden tandem transit

¹³ *Id.* ¶¶ 18, 115.

¹⁴ *Id.* ¶ 808.

¹⁵ *Id.* ¶ 13.

¹⁶ Rural Associations Petition at 39.

¹⁷ *Id.*

and other intermediate providers with investigative obligations” and could “ensnare providers that happen to receive incomplete signaling information.”¹⁸ As Comcast previously has stressed in this proceeding, any liability for failure to provide the information needed to ensure proper billing should lie solely with the party responsible for omitting information or stripping call-identifying information from the traffic before handing it off.¹⁹ The Rural Associations’ proposal would harm intermediate carriers and would be “likely to generate confusion and result in the unintended consequence of yielding additional phantom traffic disputes.”²⁰ Accordingly, the Commission should affirm the conclusions it reached in the Order.

In a related vein, the Rural Associations ask the Commission to clarify that “all kinds of VoIP services (not just interconnected) are subject to the call signaling rules,”²¹ asserting that all intercarrier compensation obligations in the Order already apply to one-way VoIP services.²² To the contrary, the Order makes clear that the phantom traffic rules currently apply only to “providers of interconnected VoIP service,” and the Commission seeks comment in the Further Notice “on the need for signaling rules for one-way VoIP service providers.”²³ Given the ongoing proceeding regarding the possible expansion of the phantom traffic rules to non-interconnected VoIP services, the Rural Associations’ request is plainly premature and should be

¹⁸ Order and FNPRM ¶ 732.

¹⁹ Comments of Comcast Corporation, WC Docket No. 10-90, at 9-10 (Apr. 1, 2011); Reply Comments of Comcast Corporation, WC Docket No. 10-90, at 4-5 (Apr. 18, 2011). *See also* Comments of Time Warner Cable Inc., WC Docket No. 10-90, at 12 (Apr. 1, 2011) (explaining that the Commission “should not punish the transiting carrier for the sins of the originating carrier, and vice versa”).

²⁰ Order and FNPRM ¶ 732.

²¹ Rural Associations Petition at 36.

²² *Id.* at 35.

²³ Order and FNPRM ¶¶ 1399-1400.

denied. The application of phantom traffic rules to such voice services should be addressed only after the Commission has compiled a complete record in response to the Further Notice.

IV. THE COMMISSION SHOULD REJECT PROPOSALS TO IMPOSE ASYMMETRICAL COMPENSATION ON VOIP-PSTN TRAFFIC DURING THE TRANSITION

The Order emphasizes the importance of adopting a symmetrical framework for VoIP-PSTN traffic and expressly “decline[s] to adopt an asymmetric approach” because of the marketplace distortions it would cause.²⁴ Nevertheless, some petitioners urge the Commission to impose an asymmetrical regime for such traffic, which generally would allow the petitioning parties to assess higher originating access charges than the Commission’s plan otherwise permits. The Rural Associations as well as Frontier and Windstream recommend that they be allowed to impose intrastate – not interstate – access charges for originating TDM intrastate toll calls that terminate on VoIP facilities.²⁵

These petitions, styled as requests for clarification, not only would reverse the Commission’s explicit decision to require symmetrical treatment for all VoIP-PSTN traffic,²⁶ but also would be inconsistent with an overriding objective of the ICC reform plan. Specifically, the Commission’s transition plan is designed, *inter alia*, to replace the current patchwork of asymmetrical ICC arrangements with a uniform bill-and-keep regime that applies to all voice traffic, regardless of the regulatory and rate distinctions that historically have governed such

²⁴ *Id.* ¶ 942.

²⁵ Rural Associations Petition at 34-35; Frontier/Windstream Petition at 21-29.

²⁶ See Order and FNPRM ¶ 969 (“We thus adopt rules making clear that origination and termination charges may be imposed under our transitional intercarrier compensation framework, including when an entity ‘uses Internet Protocol facilities to transmit such traffic to [or from] the called party’s premises.’”) (quoting Letter from Mary McManus, Comcast, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90, Attach. 1, at 2 (Sep. 22, 2011)).

traffic. The petitioners' proposal, in contrast, would create yet another asymmetrical rate distinction between different types of VoIP-PSTN traffic, a rate differential that would then have to be phased out over the transition.

The Commission should reject these requests. Instead, the Commission should affirm its decision to require that all LECs exchanging VoIP-PSTN traffic assess originating access charges under the same regime irrespective of whether the traffic originates in VoIP or TDM.

V. CARRIERS THAT ENGAGE IN ACCESS STIMULATION SHOULD BE REQUIRED TO LOWER THEIR TERMINATING ACCESS RATES TO \$0.0007 PER MINUTE DURING THE TRANSITION

As the Commission has acknowledged, access stimulation – or “traffic pumping” – is an unlawful practice that harms both consumers and competition.²⁷ The Commission's new rules defining and prohibiting access charge stimulation are an important step toward eliminating these harmful schemes that are designed to inflate access charge payments to the participants. Although the measures adopted by the Commission will lessen carriers' incentives to enter into improper revenue sharing agreements, they are unlikely in the short run completely to eliminate traffic pumping. Comcast agrees with Sprint and USTA that the Commission can and should strengthen the deterrents to traffic pumping by adopting a more effective remedy. Specifically, as Sprint and USTA recommend, the Commission should require LECs that engage in access stimulation to reduce their terminating access charges to a rate no higher than \$0.0007 per minute during the transition.²⁸

²⁷ Order and FNPRM ¶¶ 663-666.

²⁸ See Petition for Reconsideration and Clarification of Sprint Nextel Corporation, WC Docket No. 10-90, at 7-9 (Dec. 29, 2011) (proposing that both rate-of-return and competitive LECs that meet the new traffic pumping triggers be allowed to charge no more than \$0.0007 for terminating access) (“Sprint Petition”); USTA Petition at 36 (proposing that competitive LECs that engage in access stimulation be permitted to recover no more than \$0.0007 per minute for

A \$0.0007 terminating access rate would be preferable to the remedial rates established under the Commission's section 61.38 tariff change procedures for several reasons.²⁹ First, the \$0.0007 rate has been upheld in other contexts³⁰ and would constitute a rate that is "presumptively consistent with the Act,"³¹ whereas it remains possible that access tariff revisions by offending carriers under the section 61.38 process could continue to result in unreasonable rates.³² Second, requiring traffic pumpers to set their terminating access rates at \$0.0007 per minute plainly would reduce the economic incentive for carriers to engage in access

terminating access). The \$0.0007 terminating rate should remain effective until the carrier engaged in access stimulation would otherwise transition to bill-and-keep under the Commission's ICC regime.

²⁹ See 47 C.F.R. § 61.38. Comcast recognizes that the Commission declined to prescribe \$0.0007 as the remedial rate for LECs that have been found to engage in access stimulation arrangements. Order and FNPRM ¶¶ 692, 687. That conclusion, however, was based on the Commission's finding that there was "insufficient evidence" to justify imposing the \$0.0007 rate in lieu of continuing to rely on the agency's section 61.38 cost-of-service ratemaking procedure. In Comcast's view, the reasoning set forth in this section of its comments, together with the arguments advanced in the Sprint and USTA petitions, provide an ample basis for mandating \$0.0007 as the remedial rate for LECs that have engaged in traffic pumping.

³⁰ See *High-Cost Universal Service Support; Federal-State Joint Board on Universal Service; Lifeline and Link Up; Universal Service Contribution Methodology; Numbering Resource Optimization; Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Developing a Unified Intercarrier Compensation Regime; Intercarrier Compensation for ISP-Bound Traffic; IP-Enabled Services*, Order on Remand and Report and Order and Further Notice of Proposed Rulemaking, 24 FCC Rcd 6475, ¶ 29 (2008); see also *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Intercarrier Compensation for ISP-Bound Traffic*, Order on Remand and Report and Order, 16 FCC Rcd 9151, ¶¶ 78, 85, 98 (2001) ("*2001 ISP Remand Order*"); cf. Order and FNPRM ¶ 676 (citing the *2001 ISP Remand Order* for support of a 3:1 ratio of terminating to originating traffic).

³¹ See Order and FNPRM ¶ 667.

³² It will be necessary and prudent for the Commission to review the new terminating access rates filed by each offending carrier to ensure their reasonableness.

stimulation.³³ In contrast, Section 61.38's reliance on cost and demand projections likely would result in access rates that are substantially higher than \$0.0007 and, consequently, would preserve a significant incentive to continue to engage in access stimulation arrangements. Finally, lowering the offending carriers' access charge rates to \$0.0007 would be consistent with the Commission's overall plan for ICC reform. This approach would simply accelerate the reduction in ICC charges for carriers that have demonstrated a willingness to take advantage of the arbitrage opportunities that will persist during the transition to a bill-and-keep regime.³⁴

A \$0.0007 rate also would be administratively more efficient than reliance on the FCC's cost-of-service tariff review process.³⁵ The cost and demand projections required by section 61.38 as well as the resulting rates must be reviewed by Commission staff (and other interested parties) to ensure their reasonableness.³⁶ Requiring LECs that have engaged in access stimulation schemes to reduce their terminating access rates to \$0.0007 obviously would permit the FCC to devote those resources to more productive uses.

³³ USTA and others have argued that LECs engaged in access stimulation have "extremely low costs," and that the \$0.0007 rate approximates those costs more closely than a benchmark rate based on the incumbent LEC's rate, thereby reducing the incentive for carriers to enter into traffic pumping agreements. USTA Petition at 36 (arguing that allowing competitive LECs to charge a benchmark rate based on the incumbent LEC's rate would encourage access stimulation); Comments of AT&T Inc., WC Docket No. 10-90, at 16-17 (Apr. 1, 2011); Comments of Sprint Nextel Corporation, WC Docket No. 10-90, at 8-9 (Apr. 1, 2011).

³⁴ See, e.g., Order and FNPRM ¶ 741; see also *id.* ¶ 672 (noting that the new access stimulation rules are part of the FCC's comprehensive intercarrier compensation reform which will, ultimately, "address remaining incentives to engage in access stimulation").

³⁵ See Sprint Petition at 9 (explaining that limiting rate-of-return LECs that meet the traffic-pumping triggers to \$0.0007 would eliminate the problems associated with a section 61.38 rate process).

³⁶ See Order and FNPRM ¶ 685 ("This tariff filing requirement provides the carrier with the opportunity to show, *and the Commission to review*, any projected increase in costs, as well as to consider the higher anticipated demand in setting revised rates.") (emphasis supplied).

Put simply, the remedy proposed by Sprint and USTA would more effectively accomplish the Commission's stated goals of "minimiz[ing] the costs of the rule revisions on the industry, while reducing the adverse effects of access stimulation and ensuring that interstate access rates are at levels presumptively consistent with section 201(b) of the Act."³⁷ Accordingly, it would be in the public interest for the Commission to require carriers that participate in traffic pumping arrangements to reduce their terminating access charges during the transition to \$0.0007.³⁸

VI. STATE-DEFINED LOCAL CALLING AREAS SHOULD BE USED TO DISTINGUISH TOLL AND NON-TOLL VOIP-PSTN TRAFFIC DURING THE TRANSITION PERIOD

For most of the ICC transition period, the default rates for terminating VoIP-PSTN traffic will differ depending on whether or not the traffic is classified as "toll."³⁹ The Rural Associations suggest that there may be confusion in distinguishing between VoIP-PSTN calls that should be classified as toll under the transition plan and those calls that should be classified as local.⁴⁰

To resolve any ongoing confusion, the Commission should clarify that, during the ICC transition, state-defined local calling areas must be used to distinguish toll and non-toll VoIP-

³⁷ Order and FNPRM ¶ 660.

³⁸ See 47 C.F.R. § 1.429(b)(3).

³⁹ See Order and FNPRM ¶ 933 (default intercarrier compensation rates for toll VoIP-PSTN traffic are equal to interstate access rates while default rates for other VoIP-PSTN traffic are subject to reciprocal compensation rates).

⁴⁰ Rural Associations Petition at 34. In the case of VoIP-PSTN traffic, it may not be clear whether a LEC or its retail VoIP partner will originate or terminate the call. See 47 C.F.R. § 51.913(b) (a LEC may charge the relevant intercarrier compensation for functions performed by it and/or by its retail VoIP partner). This ambiguity may have led to the Rural Associations' confusion as to whether state-defined local calling areas – which apply to traffic terminated and originated by LECs – should be used in distinguishing toll and non-toll VoIP-PSTN calls.

PSTN traffic.⁴¹ This approach is consistent with the Commission's decision to assert jurisdiction prospectively over all VoIP-PSTN traffic pursuant to section 251(b)(5).⁴² Under that statutory provision, state commissions traditionally have defined local service areas for telecommunications traffic originated by a LEC and terminated by a LEC. Comcast recommends that the Commission make clear that the local calling areas established by state commissions also should apply on a going-forward basis to VoIP-PSTN traffic.⁴³ This clarification should eliminate any possible confusion about the proper rating of such traffic during the transition.

⁴¹ In doing so, the Commission also should clarify that the location of the VoIP provider, not the location of the VoIP provider's competitive LEC partner, should be used in determining the end point(s) of a call.

⁴² 47 U.S.C. § 251(b)(5); *see* Order and FNPRM ¶ 933.

⁴³ *See Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers*, First Report and Order, 11 FCC Rcd 15499, ¶ 1035 (1996). The Commission confirmed in the Order that the local area for traffic both originated and terminated by a LEC continues to be defined by the state. Order and FNPRM ¶ 944 n.1904.

VII. CONCLUSION

For the reasons set forth above, the Commission should reject petitions for reconsideration and clarification that are inconsistent with the fundamental policy principles and objectives underlying its Order and modify its decision only in those limited circumstances where the changes would advance those basic principles and objectives.

Respectfully submitted,

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Certificate of Service

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